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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

September 25, 1997

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, DC 20554

Re: Comments of the Rural Telephone Coalition
Defining Primary Lines -- CC Docket 97-181

Dear Mr. Caton:

Transmitted herewith, on behalf of the Rural Telephone Coalition, are an original and 9 copies of its comments in response to the above-referenced proceeding.

In the event of any questions concerning this matter, please communicate with this office.

Very truly yours,

Margot Smiley Humphrey

Margot Smiley Humphrey

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List ABCDE

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Primary Line Definition	)	CC Docket 97-181
	)	

COMMENTS OF THE RURAL TELEPHONE COALITION

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September 25, 1997

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SUMMARY

The Commission has proposed definitions and procedures to implement and enforce its recent decision to raise the ceiling for Subscriber Line Charges (SLCs) imposed by price cap carriers on their end users. The Commission's goal is to permit increased recovery of Common Line costs directly from the end users of local exchange service. It has also decided to shift more of the Common Line costs previously recovered in usage sensitive access charges paid by interstate long distance carriers into a flat-rate presubscribed interexchange carrier charge (PICC), which those carriers will recover from their customers. The charges will be capped at a lower level for any "primary line" to a "primary residence and any single-connection business customer.

The RTC continues to oppose the extension of the primary line distinction to ROR ILECs, but will leave further discussion of its reasons for a future proceeding which puts that question in issue. The RTC will comment on alternatives here in the realization that the Commission may well seek later to apply the definition and policies it develops for price cap ILECs in this proceeding to ROR ILECS.

Applying the supposed primary vs. secondary line distinction to SLCs is inherently inconsistent with the Commission's often-stated competitive neutrality objective and with the Act's information access, infrastructure development and deregulatory goals. These further burdens and costs will widen the gulf of asymmetrical regulation that selectively hampers only ILECs, while the different treatment for fundamentally identical lines will (a) impair rural and

urban rate comparability for -- and discourages connections used for -- information access and (b) cannot be enforced without intrusive investigations and penalties.

The RTC believes that the proposals for defining these terms again illustrate why the whole primary and non-primary line distinction is ill-advised and unworkable. The existing definition of single line business is generally satisfactory, although some clarification may be necessary to distinguish individual business subscribers in a shared location and to deal with business subscriptions to more than one carrier. The same subscriber based logic should also apply to residential lines, rather than a "residence" or "household" definition, since lines have traditionally been provided at the request of individuals, without reference to whether the subscriber's address is shared or the subscriber's co-habitants or some group that is associated with the subscriber in a household subscribe separately to one or more lines of their own. A subscriber-based definition presents less opportunity for consumer avoidance of the higher second line charge and less government-initiated intrusion into residential customers' private living arrangements and relationships. Definitions for IRS or Census purposes are not generally familiar or relevant to telephone subscribers. A separate set of problems derive from the need to identify lines provided by other carriers or in other residences and the impracticality of requiring a national data base.

Reliance on customer self-certification invites customer mis-reporting and confusion due to ambiguities in classification criteria, but is preferable to requiring ILECs to invade customer privacy further to ferret out their living and telephone ordering arrangements. Auditing ILECs in case they do not accurately report what their customers tell them, while ignoring the overwhelming customer incentives to mis-report, burdens the ILECs and further adds to their

costs for an inconsequential benefit to the overall accuracy of line classifications. However, if the Commission insists on the primary line distinction, self-certification should be implemented with a nationwide uniform disclosure statement, that correctly acknowledges the Commission's responsibility for and the upcoming increases in the resulting higher SLCS's for non-primary lines.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Primary Line Definition	)	CC Docket 97-181
	)	

COMMENTS OF THE RURAL TELEPHONE COALITION

The Rural Telephone Coalition (RTC) submits these comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.[1] The RTC is comprised of National Rural Telephone Association (NRTA), National Telephone Cooperative Association (NTCA) and Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO). Together, the three associations represent more than 850 small and rural incumbent local exchange carriers (ILECs). Members of the three associations typically serve rural study areas where the cost of providing universal services is inherently high.

[1] Defining Primary Lines, CC Docket No. 97-181, FCC 97-316 (released September 5, 1997) (NPRM).

I. INTRODUCTION

While the Commission has separated its access reform proceedings for price cap ILECs from access reform for the rate of return (ROR) ILECs that form the RTC associations' membership, it has made no secret of its interest in expanding the applicability and extending the uses for its policy of reducing the caps on charge levels and shrinking universal service support. For example, the Commission decided not to implement the proposal to raise SLCs or terminate high cost support for non-primary and multi-line business lines served by rural telephone companies "at least until January 1, 2001."[2] It nevertheless announced its intention to continue to evaluate its proposal to exclude "additional residential connections or multiple connection businesses" in rural ILEC areas from high cost support calculations. [3] It is clear that the Commission's intent is to extend its primary line distinction to ROR LECs, as it has asked

> whether the various proposals set forth in this NPRM for defining, identifying, and verifying primary lines for price cap ILECs could also be applied for rate-of-return ILECs if, in [its planned] future proceeding, the Commission concludes that all ILECs should assess SLCs and PICCs that are higher for secondary lines.[4]

Given this background, the RTC can take no comfort in the ostensible limitation of this proceeding to implementing the new higher-SLCS policy for price cap ILECs. Thus, we shall comment on the proposals in the NPRM to protect the interests of ROR ILECs.

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[2] Federal-State Joint Board on Universal Service, CC Docket No. 96-45, (Universal Service). FCC 97-181, FCC 97-316, para. 96 (released Sept. 5, 1997).

[3] Ibid.

[4] Ibid.

Consequently, the Commission should not mistake the RTC's discussion of implementation proposals for a retreat from our conviction that the primary line distinction is bad public policy. The distinction, as implemented in the NPRM proposals, involves unprecedented government intrusion upon the privacy of telephone subscribers, is basically incapable of fair implementation, does not offer public benefits that could possibly outweigh the burdens and costs of implementation, could only be enforced meaningfully by heavy consumer penalties and aggressive investigations and makes a mockery of the 1996 Act's deregulation and pro-competition purposes.

The Commission's rules already hamper ILECs with enormous regulatory burdens, costs and responsibilities, compared to virtually no regulation of their competitors, such as AT&T and MCI, that plan to offer competing local exchange and access services. Adding classification of customers' telephone connections, living arrangements and alternative residences to the long list of ILEC regulations will magnify the competitive disadvantages, by increasing the regulatory inequality that already impedes ILECs in the new marketplace-driven environment. Indeed, unless the Commission takes responsibility for informing customers of the new treatment it has ordained for non-primary residential lines and the additional connections businesses typically need, the ILECs will bear the brunt of their customers' confusion and hostility for this further government intrusion. Customers will be puzzled as to the rationale, but will quickly see how to avoid some of the arbitrary price differentials and certification burdens by subscribing to lines obtained from non-ILECs.

The ILEC lines slated for higher SLCs are often connections obtained to allow access to the Internet, the customer's fax machine or timely information of business or personal value.

Residential and business customers alike need to use such networks and devices without foregoing regular voice telephone calls. Well-informed ILEC customers and the Congress that adopted the 1996 Act will be shocked to discover these new government-ordained price hike and lost privacy obstacles to the affordable, readily available advanced telecommunications and information services Congress intended by the new law.

II. DEFINING SINGLE LINE BUSINESS LINES AND PRIMARY RESIDENTIAL LINES

A. Single Line Business Connections

The RTC generally agrees with the proposal to use the existing definition of single line business.[5] For any given business location it is a relatively straightforward means to determine the number of subscribed lines. There will be instances, however, where there are multiple clearly separate businesses at the same location, in some cases under separate ownership, in others under common control. This definition is thus a subscriber- rather than residence-focused definition. Consistent logic would indicate that the residence definition should also be subscriber- rather than location-focused.

The multiple locations issue in the of section 69.104(h) definition refers to lines from a particular telephone company, implying that a business with single lines at several different locations, each served by a different telephone company, is charged only at the single line rate. This reading is inconsistent with the result the Commission appears to want for residential lines. As with residences, however, there is no practical way to determine that a business has a line provided by another telephone company, short of creating a highly complex and costly national data base.

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[5]NPRM, para 5

Because it is extremely difficult to operate most types of businesses with only one line at a location, as a practical matter the revenue foregone by not identifying all multiple lines is likely not to be material. However, the implications for the larger residential market must also be considered.

B. Primary Residential Line

The NPRM requests comments on whether the primary line should be identified in relation to the subscriber, the residence, the "household" or on some other basis. Each of the three identified alternatives presents problems of administration, feasibility, ease of avoidance, or intrusion on privacy.

1. Subscriber

The practice[6] of the telephone industry over more than a century has been to allow any creditworthy adult to become a "subscriber" in his or her own name, without regard to any relationship with any other person residing in the same household. If the right to individual subscription were eliminated by rules which had the effect of changing the terms of one subscriber's service because of service to another subscriber in the same residence, there would be a significant public outcry.

Further, using subscribership as the basis for counting lines eliminates the problems of counting by residence or household, but also allows any family or other group which would otherwise be likely to share a subscription to avoid the additional second line charges by creating separate subscriptions for as many individuals as lines are desired. There is no practical way to distinguish between multiple subscriptions which would have occurred in the absence of

[6] The term "practice" is used in the sense of 47 U.S.C. 201(b) and 202(a).

differential charges and those ordered to avoid the differentials. The proposal to base charges on the customer's self-certification is naive and inconsistent with experience. California allows self-certification of eligibility for its lifeline program with the result that fifteen percent of the subscribers claim eligibility for the SLC waiver in contrast with less than seven percent in New York. The result of self-certification will be that the additional revenues forecast on the basis of current counts of second lines will simply not materialize.

2. Residence

Using residence as a basis has the advantage of providing the ILEC with a reasonable ability to count the number of lines, at least when considering single family dwellings. Besides the problem described above, however, residence becomes more complicated as the number of households in a building increases. Does residence refer to a building or to a separate dwelling unit? If the latter, how separate does it need to be? Can a kitchen and/or bathrooms be shared? If a building is declared a single residence, to which occupants should the "additional line" charges be assessed?

Mailing addresses would not provide sufficient information, particularly in many rural areas, where only Postal Routes or Post Office boxes are specified. Would it make sense to charge different telephone rates because one apartment building uses a common address, while another identical building uses multiple addresses?

The Commission's primary line concept envisions that second lines will be counted wherever located. How is the ILEC to bill a group home when one resident has an additional telephone subscription in another state? Will college dormitory phones be charged the higher rate whenever each resident has a telephone, whenever each resident in a two-person room has a telephone, or whenever some residents have telephones at the homes of their parents?

3. Household

Defining "primary line" on the basis of some definition of "household" addresses somewhat the issue of applying increased SLCs to an "economic unit," but raises serious issues of enforcement and privacy. Subscribers may have no direct reason to mislead a census taker, but the decennial application of the definition does not produce familiarity with the concept. More importantly, the definition used includes entities which should not be charged extra fees because of the subscription of others sharing their living quarters, such as two families living together or a group of unrelated persons sharing a house.[7] The census uses the term for different purposes, not relevant to recovering the costs of providing telephone service.

Use of the Internal Revenue Service definition presents a similar problem of relevance, in that it focuses on particular family relationships which were determined by Congress, as a matter of social policy, to be entitled to certain preferential tax treatment. The head of household tax treatment is applicable only to certain eligible taxpayers and is not used by the majority. [8] In any event, rural incumbent LECs should not be required to deal with their subscribers on the basis of IRS regulations in which they do not have expertise and with which they do not want to be identified.

If a subscriber is asked by a telephone company whether he or she is part of a household that also has service, and advised that a positive answer means an increased charge, the Commission must recognize that there will be a high proportion of negative responses. Self-certification is therefore not a practical means of administering any of the distinctions based on

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[7] NPRM at para. 7, n.26

[8] I.R.C. Sections 1(b), 2(b).

personal relationships between occupants of a particular building because correct answers will be contrary to the individual's financial self-interest. Beyond that and perhaps equally significant, the subscriber will rightfully consider that relationship information is "none of the telephone company's business." Hence, the result would be to pile customer ill-will on top of the administrative costs of the primary line classification scheme.

III. Identification of Primary Residential Line

A. Information required

The NPRM recognizes correctly[9] that ,even if determinations are made on the basis of residence, the records of a single ILEC will neither reveal all multiple lines nor provide any basis for determining which of two LECs should consider its line the primary line.[10] Self- certification is unlikely to provide accurate information as the California lifeline program noted above indicates. To the extent subscribers acknowledge their relationships, there will certainly be a significant proportion of those who will discontinue their second line service. Again, the result will be less Internet use by families who need to keep the primary line open, and a decrease in revenue to the ILEC, without any countervailing decrease in costs.

To the extent subscribers provide the best information they can, even if contrary to their economic self-interest, a material number of situations will be ambiguous, objective data will be lacking and the subscriber will be hesitant to certify. If residence is the basis, it will often not even be clear which occupant should certify whether any of the other occupants have additional lines anywhere.

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[9]NPRM at para. 8

[10] Where a subscriber is determined to have two (or more) lines with two (or more) ILECs, he or she may still have a financial incentive to identify one of those as primary where the SLC charges are different between the two ILECs.

B. Resellers

The Commission correctly concluded that resellers providing a second line should be charged the higher SLC.[11] Resellers should be required to provide certification to the ILEC, along with sufficient information for the ILEC to assess the primary and secondary line SLCs correctly. This information should be subject to periodic audit. There will be situations in which the ILEC and reseller both provide lines to a given residence or subscriber. In such cases, the ILEC-provided line should be primary if it was installed first (i.e. the first service order was to the ILEC).

C. National Data Base/Privacy Issues

The Commission also correctly rejects proposals for a national data base.[12] A national data base is not the correct solution on the basis of expense, ease of administration, or subscriber privacy. As the well known maxims about "garbage in/garbage out" illustrate, a large collection of incorrect answers provides no better -- and probably worse -- results than a locally administered program.[13] It would increase subscriber hostility because of the "you must be wrong, that's what's in the computer" syndrome, as well the extensive threat to privacy posed by national collection of information regarding the living arrangements of almost all Americans. Whatever the level of aggregation, any data collected to enforce tariffs written under the proposed rules must be strictly restricted to that purpose.

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[11] NPRM at para. 11.

[12] NPRM at para. 12

[13] Zip Codes, for example do not provide sufficient information to charge individual subscribers, even at the nine digit level.

IV. VERIFYING, AUDITING AND ENFORCING ACCURATE PRIMARY RESIDENTIAL LINE CLASSIFICATIONS

A. Audits and Models

The Commission recognizes the need to police the accuracy of its novel and complicated primary line/primary residence classification if it is going to succeed in shifting more of the interstate cost of serving non-primary lines directly into subscriber bills. It also seems to have taken into account that, whether line classifications are policed by the Commission or by ILECs, there would surely be a public outcry. Customers would protest a federal government scheme launching FBI-like investigations or IRS-like audits against private citizens. ILECs would resist the requirement to invade their customers' privacy. Indeed, the Commission also seems to have sound misgivings (paras 20-21) about the reach of its authority into customers' lives.

Determined to pursue its assault on the regulatory equality of "primary" and other lines, the Commission seems to have chosen to ignore whether customers provide the right information. Instead, the Commission embraces a spurious concern that ILECs might entice customers to misclassify and report "secondary" lines as "primary" to avoid having to raise the SLCs for secondary lines.[14] Since representatives of the larger price cap ILECs have advocated higher SLCs, [15] the unsupported conjecture that ILECs would resort to collusion in customer misrepresentation to avoid SLCS increases is far too fanciful to justify the proposed new ILEC obligations, regulatory burdens, audits and penalties.

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[14] The Commission reiterated (NPRM, para. 17) that under its access charge reform for price cap ILECs those companies may choose not to raise their SLCs for secondary lines, but may not recover the shifted interstate costs in Carrier Common Line access charges or PICCs.

[15] See, e.g. Universal Service, Appendix J, p. J-220, n. 4095.

Carrier surveillance and sanctions for ILEC errors in record-keeping is a worthless enforcement measure when the validity of the customers' data in the ILEC records is arbitrarily presumed accurate. Even apart from customer incentives to avoid higher charges, it is highly probable that end users will make mistakes in applying the complex and artificial primary line standards. However, the rational solution is not to police and penalize the end users, too, but rather to desist from the useless distinction — or at least the pointless audits of whether the ILECs accurately record whatever their customers tell them. That proposal is no more rational than a proposal that courts must audit whether court reporters are preparing accurate transcripts of what witnesses say, but ignore whether the witnesses that testify before them are telling the truth.

Using a forward looking cost model's prediction of the proportion of primary lines might give an illusion of validity, but would not indicate whether an ILEC's reports of customer classifications were credible. Indeed, a mismatch would be more likely to indicate that the forward-looking cost model was inaccurate in predicting the proportion of primary lines. Moreover, the historical primary line data are not relevant because they describe the period when rates for primary and secondary lines were identical.[16] Such backward-looking predictors are most unlikely to predict accurately the proportions of primary and secondary lines in a market where prices will differ not only for primary and secondary lines, but also for second lines obtained from different carriers. Similarly, census data and data request results based on an ILEC's overall proportion of primary lines provides no clue to whether any particular line has been reported as a secondary line but claimed by the ILEC as a primary line. Yet that alone is the pertinent issue of fact in assessing whether the ILEC's record-keeping is accurate — unless the

[16] That is also the case for current or historical data about second lines elicited by the Commission's data request. (See NPRM, para.19).

Commission actually intends a tacit requirement for ILECs to investigate the veracity of their subscribers' self-certifications.

B. Enforcement

The Commission has authority to enforce accurate ILEC record-keeping, ILEC disclosure of requirements to their customers and, perhaps, even ILEC tariffing of the self-certification duty as a condition of service. However, the Commission should not waste its resources in probing the extent of its authority to increase its micro-management of ILECs or extend its authority over their customers. Enforcement proceedings against individual customers would not be a practical tool for dealing with the nation's more than 150 million subscribers, in any event. More importantly, to seek new ways to impose duties and sanctions on customers and carriers and to initiate a system of "truth-in-ordering" enforcement or ILEC record keeping and line charge audits is fundamentally at odds with the letter and spirit of the 1996 Act. That landmark legislation calls for greater marketplace reliance, less regulatory interference and minimal use of private customer information, as well as wide availability of advanced and information services at affordable and comparable rural and urban rates. The Commission's secondary line SLC increases and enforcement proposals march in the opposite direction.

C. Consumer Disclosure

The RTC agrees there should be a prescribed customer disclosure statement to ensure uniformity and to make clear that the rates are government-imposed, not carrier-made.[17] Uniform responses to consumer questions will also be essential. As the NPRM candidly admits (para. 22), the " new distinction between primary and secondary residential lines may cause customer confusion." The disclosure statement should be provided in writing because it is too complicated for the average telephone subscriber to grasp if only told orally at the time service is ordered: The ordinary marketplace does not expose customers to "one for a dollar, two for five dollars" pricing. And the Commission should assume responsibility for answering customer questions at a toll free number to ensure consistency.

The proposed statement in the NPRM does not make the origin of the requirement clear and burdens the subscriber with unnecessary, arcane cost allocation and cost causation issues.[18] The statement should read as follows:

> Your bill includes a subscriber line charge (SLC) for each line to which you subscribe. Your telephone company is required to make this charge by the Federal Communications Commission. If you [or your residence or household] subscribe to more than one line at this or any other location in the United States, its territories or possessions, the FCC requires a higher charge for the second and all subsequent lines. For 1998, the charge for the first line is $3.50 and for all other lines is $5.00. You have the legal obligation under the FCC's rules to certify accurately and truthfully to your local exchange company the quantity and location of all residential lines to which you subscribe in this and any other local exchange area and to specify the one residential line you classify as your first line and the

[17] The disclosure proposed in the NPRM is particularly confusing because it implies that the Commission's action as necessary to prevent ILECs from charging more than the applicable cap.

[18] NPRM at para. 22

location of that line. Any inquiries concerning this charge or this reporting requirement should be directed to the Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554, by mail, by e-mail at _____ or by telephone at 1-(800) or (888)- _____.

V. CONCLUSION

For the foregoing reasons, the RTC urges the Commission not to implement its plan to raise the cap on price cap ILECs' SLCs for all but primary residential lines by:

(a) adopting definitions, information gathering requirements, or enforcement measures that will invade ILEC customers' privacy, invite their evasion, direct their resulting ill will against ILECs or discourage their use of ILEC-provided "additional lines"; or

(b) imposing heavy audit requirements or penalties for ILECs to remedy a purely speculative danger that ILECs will encourage or charge on the basis of deliberate misclassification of additional lines as primary lines entitled to a lower SLC cap.

Respectfully submitted,

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September 25, 1997

CERTIFICATE OF SERVICE

I, Sheila V. Hickman, a secretary in the office of Koteen & Naftalin, L.L.P. hereby certify that true copies of the foregoing Comments of the Rural Telephone Coalition have been served on the parties on the attached service list, via first class mail, postage prepaid, on the 25th day of September, 1997.

By: Sheila V. Hickman
Sheila V. Hickman

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